

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: William L. LETT 571159

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2480

William L. LETT

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By order dated 17b February 1988, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington, admonished Appellant. This order was issued upon finding proved a charge of Violation of Law supported by two specifications. The first specification found proved that Appellant, while serving as Master of the M/V ALASKAN HERO, under the authority of the captioned license, did, from on or about 27 July 1987 through 24 September 1987, operate said vessel on the high seas while engaging or employing an unlicensed individual to serve as mate in violation of 46 U.S.C. SS8304. The second specification found proved that Appellant, while serving as Master of the M/V ALASKAN HERO, under the authoity of the captioned license, did, from on or about 27 July 1987 through 24 September 1987, on the high seas, allow a non- U.S. citizen to serve as an officer in charge of a deck watch on a documented vessel in violation of 46 U.S.C. SS8103.

The hearing was held at Seattle, Washington 18 December 1987. Appellant appeared at the hearing and was represented by lawyer counsel. Appellant entered, in accordance with 46 CFR Ss5.527(a), an answer of no contest to the charge and each specification.

The Investigating Officer introduced in evidence six exhibits and called no witnesses. Appellant introduced one exhibit into evidence and called no witnesses. Appellant did not testify at the hearing.

The Administrative Law Judge admitted one exhibit as Administrative Law Judge's Exhibit I.

Based upon Appellant's answer and the evidence submitted, the Administrative Law Judge concluded that the charge and specifications were found proved.

The complete Decision & Order was dated 17 February 1988 and was served on Appellant on 18 February 1988. Notice of Appeal was timely filed and considered perfected on 7 July 1988. Appellant's appeal is now properly before me for review.

#### FINDINGS OF FACT

At all times relevant, Appellant was the holder of Coast Guard Merchant Mariner's License No. 571159. Appellant's license authorized him to serve as Master of steam or motor vessels of not more than 3,000 gross tons on oceans and not more than 200 miles off shore.

The M/V ALASKAN HERO, Official No. 569 276, at all times relevant to the charge and specification, was a documented, uninspected fishing vessel of the United States. The M/V ALASKAN HERO is 200 feet in length and 1,213 gross tons, owned by the AKC Corporation of Seattle, Washington. The vessel was being used as a "catcher-freezer" in the waters off Alaska.

Appellant and the Investigating Officer stipulated as fact that Appellant was the sole United States licensed deck officer, and that an unlicensed non-U.S. citizen was engaged to serve as a navigational officer in charge of a deck watch on board the M/V ALASKAN HERO from on or about 24 July 1987 through 24 September 1987.

#### BASIS OF APPEAL

Appellant raises the following issue on appeal:

(1) Is it improper for the United States Coast Guard to impose sanctions against a mariner's license for alleged violation of law concerning the complement of licensed officers on board an uninspected vessel where, at all times relevant, the master was complying with instructions received from a Coast Guard Marine Safety Office, where, during the period of the alleged violation, officers from two different U.S. Coast Guard cutters boarded and inspected the vessel and submitted Reports of Boarding to the master showing "No Violations", and where there is a total absence of evidence of intent to violate the law?

Appearance: By Stan Loosmore, Esq.

1411 4th Ave #1330  
Seattle, Washington 98101

### OPINION

On advice of counsel, Appellant answered "no contest" to the charge and specifications. Appellant presented the issue of detrimental reliance as a mitigating factor in closing argument without presenting any evidence or witnesses in support of his argument. Appellant's counsel argued in favor of a sanction of admonition for his client. Counsel was persuasive. The Administrative Law Judge entered an order admonishing Appellant.

Now, Appellant raises, for the first time on appeal, the defense of detrimental reliance. Appellant argues that his actions resulted from his reliance on advice relayed to him by the representatives of the AKC Corporation, owners of the M/V ALASKAN HERO, who Appellant alleges queried the Coast Guard Marine Safety Office in Los Angeles/Long Beach concerning the manning requirements. Appellant's argument is foreclosed by his provident answers of "no contest". On the advice of counsel, Appellant elected to present no defense at the hearing.

A provident answer of "no contest" constitutes a waiver of all non-jurisdictional defects and defenses. Such an answer, in and of itself, is sufficient to support a finding of proved. See 46 CFR 5.527(c). All answers except a denial operate as an admission of all matters of fact as charged and averred. Furthermore, an appeal may not set aside an answer of admit or no contest unless it was found to be improvidently made. See Appeal Decision 2376 (FRANK); Appeal Decision 1203 (DODD); Appeal Decision 1712 (KELLY); Appeal Decision 2362 (ARNOLD); Appeal Decision 2385 (CAIN); Appeal Decision 2268 (HANKINS); Appeal Decision 1631 (WOLLITZ); Appeal Decision 466 (SIMMONS); See also Appeal Decision 1741 (GIL); Appeal Decision 1752 (HELLER); Cf. Appeal Decision 2463 (DAVIS); Appeal Decision 2458 (GERMAN). An Appellant who fails to raise a defense at the hearing is precluded from raising it for the first time on appeal. See Appeal Decision 2376 (FRANK); Appeal Decision 2400 (WIDMAN); Cf. Appeal Decision 2384 (WILLIAMS); Appeal Decision 2184 (BAYLESS); Appeal Decision 2151 (GREEN); Appeal Decision 1977 (HARMER).

In this case, the record establishes that the Administrative Law Judge held an adequate providency inquiry to determine Appellant's knowledge and understanding of the elements of the charge and

specifications. (Transcript at pp. 11-12, 19-20). Furthermore, Appellant was adequately represented by competent counsel and was fully apprised of the consequences of his answer. (Transcript at p. 9).

Appellant's answer reflects his stipulation which admits the necessary elements of the violations and recommends an order of admonishment. (I.O. Exhibit 5). With regard to the first specification alleging violation of 46 U.S.C. 8304, Appellant stipulated that during the voyage set forth in the specifications an unlicensed individual was engaged to serve as a navigational officer in charge of a deck watch. For the purpose of 46 U.S.C. 8304, a navigational officer is the equivalent of a mate. *United States v. Neves*, 580 F.2d 985 (9th Cir. 1978). With regard to the second specification alleging violation of 46 U.S.C. 8103, Appellant stipulated that during the voyage set forth in the specifications a non-U.S. citizen was engaged to serve as an officer in charge of a deck watch.

### CONCLUSION

Having reviewed the entire record, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

### ORDER

The decision and order of the Administrative Law Judge dated 17 February 1988, at Seattle, Washington is AFFIRMED.

CLYDE T. LUSK, JR.  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 21st day of January, 1989.

\*\*\*\*\* END OF DECISION NO. 2480 \*\*\*\*\*